XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A.(C) 1145 सन् 2007

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANTS:
Non-applicants No.2 & 1

1. Kirtan Lal Bareth, S/o Chaitram Bareth, aged about 40 years, R/o Kamrid, Thana Khakhagaon, District Janjgir-Champa (C.G.)

2. Chhamman Lal Bareth, S/o Chaitram Bareth, aged about 40 years, R/o Kamrid, Thana Khakhagaon, District Janjgir-Champa (C.G.)

-Versus-

RESPONDENTS:

1. Pritam Anant, S/o Shobharam Anant, aged about 23 years, R/o Laban, Thana Kasdol, District Raipur (CG)

2. The Oriental Insurance Company Ltd., Branch Transport Nagar, Korba, District Janjgir, Office at Bilaspur (C.G.)

(Appeal under Section 173 of the Motor Vehicles Act)

Division Bench: -
Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ.

16-10-2007:-

Shri Ajit Singh, counsel for the appellants.

Oral order dictated on *Dais*.

Sunil Kumar Sinha, J.

Heard on admission.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(36)

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आदेश पत्रक (पूर्वानुबद्ध)

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This appeal is directed against the award dated 31-8-2007 passed in claim case No.16/2006 by the 1st Additional Motor Accident Claims Tribunal, Baloda Bazar, whereby the Tribunal awarded a sum of Rs.5,43,000/- as amount of compensation to injured Pritam Anant (respondent No.1).

Brief facts are that respondent No.1 was working as labour in the tractor-trolley which was being used for transportation of Muram on the date of the incident. At the time of unloading tractor-trolley turned turtle and he received injuries. Ultimately, there was permanent disablement of his both legs. Though tractor-trolley was insured but the liability has been fastened on the owner because tractor-trolley, which was insured for agricultural purposes, was being used for commercial purposes i.e. for carrying of Muram.

This appeal has been filed by the owner and driver of the tractor-trolley.

Learned counsel for the appellants argues that compensation has been awarded on higher side, it was not a case of permanent disablement and the liability has wrongly been fastened on the owner.

We have perused the impugned award and have also perused the evidence of witnesses filed along with the award. The Tribunal has recorded a finding vide para-10 of the award that from the evidence of Dr. G.S. Bachhu (PW-5), it has been established that due to said accident both legs of the injured had been paralyzed and disablement sustained by the injured is 100%. He has given his report Ex.P/67. As the Tribunal has

(37)

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recorded the said finding, therefore, it is clear that the injured, who was working as labour, got permanent disablement on account of his both legs being paralyzed and in that situation, certainly he would not be able to perform his labour work and such kind of disablement, in case of a labour, would amount to permanent disablement. The Tribunal has rightly recorded finding in this regard.

So far as liability is concerned, the point has been dealt with by the Tribunal in issue Nos. 3A and 3B. The Tribunal has recorded a finding that on the fateful day tractor-trolley was engaged for carrying Muram and since construction of a road was going on, therefore, finding has been recorded that perhaps Muram was being taken to the road side. The appellant has also filed copy of the evidence of PW-3 Shiva, who has also stated vide paras-2 and 4 of his evidence that Muram had been carried by tractor-trolley which was being unloaded by them. The Tribunal has discussed vide para 14 of the award that the appellants have tried to make out a case by their evidence that soil was being taken in the tractor but they have taken a plea in the written statement that the Muram was being taken by them. Therefore, in light of such pleading evidence of taking soil for agricultural purpose can not be accepted. Therefore, ultimately, a finding has been recorded that tractor-trolley was being used for carrying Muram & it was engaged in other than agricultural purposes, which was breach of policy and on this ground Insurance Company has been exonerated.

As far as quantum is concerned, para-18 of the award shows that the Tribunal has recorded a finding that the injured was earning Rs.3,000/-

(38)

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per month and after deducting Rs.1,000/-, Rs.2,000/- was held to be monthly income and annual income of the injured was held to be 24,000/- and looking to the age of the injured, which was in between 23-24 years, multiplier of 17 has been applied. Loss of earning has been calculated in sum of Rs.24,000 x 17 = 4,08,000/-. Apart from that, Rs.1 lakh has been awarded by the Tribunal towards expenses incurred in treatment of the injured, which appears to be based on bills etc. Over and above, an amount of Rs.25,000/- has been awarded as amount which may incur in future treatment and Rs.5,000/- each has been awarded for conveyance expenses and special diet etc. during the treatment. In this manner, Rs.5,43,000/- has been awarded in favour of the injured. For the foregoing discussions and in the facts and circumstances of the case, we do not deem that amount awarded by the Tribunal is on higher side.

Therefore, contentions raised by learned counsel for the appellants fail. The appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed, at the admission stage itself.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

Amit

19.1.10